

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

Plaintiff,

**vs.**

**Cause No. 1:19-cr-03113-JB**

**ROBERT PADILLA, et al.,**

Defendants.

**JOINT MOTION TO CONTINUE TRIAL AND  
MOTION TO EXTEND TIME TO FILE OR RESPOND TO MOTIONS**

Defendant Robert Padilla (“Mr. Padilla”), by and through counsel, Romero & Winder, PC (Joe M. Romero, Jr.), respectfully files this Joint Motion requesting the Court to continue the trial currently set for August 1, 2022, for one hundred and twenty (120) days, and to grant a corresponding extension to file or respond to motions. As grounds for this motion, Mr. Padilla states as follows:

**PROCEDURAL BACKGROUND**

On March 16, 2022, Defendant Padilla filed a Joint Motion to Continue Trial and Motion to Extend Time to File or Respond to Motions (Doc. 656). On April 5, 2022, the Court granted said Motion by entering an Order (Doc. 681) which continued the trial to August 1, 2022.

**FACTUAL BACKGROUND**

On September 11, 2019, a grand jury returned a 19-count Indictment charging all 12 Defendants with conspiracy to commit distribution of controlled substances. *See* Indictment, Count 1 (Doc. 2). Each Defendant is also charged in one or more of the other 18 counts. *Id.* at Counts 2-19.

All but three defendants have entered into plea agreements in this case. The three defendants who have yet to resolve their cases by way of a negotiated plea agreement, and whose

cases are currently pending are Defendants Robert Padilla, Genevive Atencio, and Janaya Atencio.

A Jury Trial for Defendants Robert Padilla, Genevive Atencio, and Janaya Atencio is currently set for August 1, 2022.

Currently, counsel for the Government and counsel for Defendants Genevieve Atencio and Janaya Atencio request additional time to complete ongoing plea negotiations in this case. At a Status Conference held on July 15, 2022, counsel for the Government and counsel for Defendants Genevieve Atencio and Janaya Atencio informed the Court that they are engaged have previously engaged in plea negotiations and expect their cases to be resolved by way of plea agreements. They are requesting additional time in which to complete their plea negotiations.

Regarding Defendant Robert Padilla and separate from the pending drug conspiracy in which he is represented by undersigned counsel, Indictment No. 19-3113, Mr. Padilla was recently charged (on May 20, 2022) in a new four (4) count indictment, Indictment No. 22-CR-0634. The new indictment, Indictment No. 22-CR-0634, charges Mr. Padilla with Retaliation Against a Witness, Victim, or Informant, in violation of 18 U.S.C. §§ 1513(a)(1)(B) and 2; Killing While Engaged in Drug Trafficking, in violation of 21 U.S.C. §§ 848(e)(1)(A) and 2; Carrying a Firearm in Relation to a Drug Trafficking Crime, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii),(iii), (j)(1) and 2; and Witness Tampering, in violation of 18 U.S.C. §§ 1512(a)(2)(C) and 2.

As a result of the charges in new indictment, Indictment No. 22-CR-0634, Mr. Padilla faces a mandatory life sentence if he were to be found guilty of the allegations in either Count I or Count II of said indictment. Moreover, the drug trafficking allegations in Count II of

Indictment No. 22-CR-0634 are similar to the allegations in Indictment No. 19-CR-3113 insofar as the alleged drug trafficking dates in both indictments are identical.

Undersigned counsel in this case, Indictment No. 19-CR-3113, requires additional time to consult with Mr. Ron Gainor, Mr. Padilla's attorney in Indictment No. 22-CR-0634 to review and compare the discovery in both cases. It is necessary to analyze how the respective discovery in both cases overlaps and how any plea in Indictment No. 19-CR-3113 could adversely impact Mr. Padilla's defense to the allegations in Indictment No. 22-CR-0634. Currently, Mr. Gainor and Mr. Padilla are awaiting receipt of all discovery in Indictment No. 22-CR-0634. As such, Mr. Padilla requires a continuance of the trial in the above captioned case to allow sufficient time to conduct the requested discovery review and analysis.

The requested one hundred and twenty (120) days is the minimum amount of time that is required for the parties to either conduct and complete ongoing plea negotiations and for Defendant Padilla to undertake with necessary consultation with counsel for Mr. Padilla (Mr. Ron Gainor) in Indictment No. 22-CR-0634.

Defendants request a continuance of the trial of no less than one hundred and twenty (120) days from the current setting. Counsel believes that length of time to be the minimum that will be sufficient to complete the tasks indicated in the Motion.

Defendants right to the effective assistance of counsel includes adequate time to prepare for trial. Without that adequate time to prepare for trial, Defendants will be denied their right to the effective assistance of counsel. As the Eleventh Circuit has recognized, implicit in this right to counsel is the notion of adequate time for counsel to prepare the defense:

Disposition of a request for continuance . . . is made in the discretion of the trial judge, the exercise of which will ordinarily not be reviewed. But the denial of opportunity for appointed counsel to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more

than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.

*United States v. Verderame*, 51 F.3d 249, 252 (11th Cir. 1995) (quoting *Avery v. Alabama*, 308 U.S. 444, 446, 60 S.Ct. 321, 322 (1940)).

Defendants agree with this continuance and will not be prejudiced by this continuance. Additional time will not prejudice Defendants and will permit them additional time to further investigate this case, to prepare for pretrial motion hearings, to complete ongoing plea negotiations, and, if necessary, prepare for trial. Specifically, a continuance will provide the Government and Defendants Genevive Atencio and Janaya Atencio to complete ongoing plea negotiations. Further, a continuance will allow Defendant Robert Padilla ("Mr. Padilla") and his counsel in Indictment No. 22-CR-0634 to review the respective discovery in both cases and analyze how the discovery in both cases overlaps and could adversely affect Mr. Padilla regarding claims and defenses he may wish to assert or preserve in in Indictment No. 22-CR-0634.

Counsel has discussed with Defendants their rights under the Speedy Trial Act and Defendants understand the need for a continuance and respectfully requests that the court continue the trial setting for the one hundred and twenty (120) days requested by counsel.

Undersigned counsel affirmatively states that the ends of justice will be served by granting this extension of time in which to file motions and a continuance of the trial. *See United States v. Hernandez-Mejia*, 406 Fed. App'x. 330, 338 (10th Cir. 2011) ("The Speedy Trial Act was intended not only to protect the interests of defendants, but was also 'designed with the public interest firmly in mind.'") (quoting *United States v. Toombs*, 574 F.3d 1262, 1273 (10th Cir. 2009)). A continuance of the deadlines and jury trial in this matter will provide Defendants time to continue his ongoing review of discovery, pursue any investigation, and assess the

viability of any defenses. Additionally, a continuance will permit the parties time to discuss a possible negotiated resolution of this matter. Such a negotiated resolution would conserve judicial and prosecutorial resources and could also materially benefit Defendants by providing an opportunity for a more favorable resolution of this matter. This motion is not predicated upon the congestion of the Court's docket.

Counsel for the government, AUSA Elaine Y. Ramirez joins this motion.

Counsel for Defendant Genevieve Atencio (B.J. Crow, Esq.) and counsel for Defendant Janaya Atencio, (Megan Mitsunaga, Esq.) join this motion.

WHEREFORE, Defendants and the United States respectfully request that this Court continue the current trial setting as requested and grant a corresponding extension of motions deadlines as set forth above.

Respectfully Submitted,  
Romero & Winder, PC

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Certificate of Service

I hereby certify that the foregoing pleading was filed electronically pursuant to CM/ECF procedures for the District of New Mexico, which caused the parties and/or their counsel to be served by electronic transmission, as more fully reflected by the Notice of Electronic Filing.

/s/ Joe M. Romero, Jr.  
Joe M. Romero, Jr.